

2C:35-5.4

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LAWS OF: 1999 **CHAPTER:** 334

NJSA: 2C:35-5.4 (Restraining orders)

BILL NO: S1697 (Substituted for A2878)

SPONSOR(S): Gormley and Bryant

DATE INTRODUCED: January 28, 1999

COMMITTEE: **ASSEMBLY:** -----

SENATE: Judiciary

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** December 13, 1999

SENATE: September 30, 1999

DATE OF APPROVAL: January 10, 2000

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: First Reprint
(Amendments during passage denoted by superscript number)

S1697

SPONSORS STATEMENT: (Begins on page 5 of original bill) [Yes](#)

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: [Yes](#)

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A2878

SPONSORS STATEMENT: (Begins on page 5 of original bill) [Yes](#)

Bill and Sponsors Statement identical to S1697

COMMITTEE STATEMENT: **ASSEMBLY:** [Yes](#)

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: [Yes](#)

FOLLOWING WERE PRINTED:

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No

NEWSPAPER ARTICLES:

No

P.L. 1999, CHAPTER 334, *approved January 10, 2000*
Senate, No. 1697 (*First Reprint*)

1 **AN ACT** concerning the removal and restraint of persons who commit
2 or are charged with certain offenses and supplementing Title 2C of
3 the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the “Drug Offender
9 Restraining Order Act of 1999.”

10

11 2. The Legislature hereby finds and declares to be the public policy
12 of this State, the following:

13 a. By the enactment of the “Comprehensive Drug Reform Act of
14 1987,” N.J.S.2C:35-1 et seq., the Legislature recognized that the
15 unlawful manufacture, distribution, possession and use of controlled
16 dangerous substances poses a serious and pervasive threat to the
17 health, safety and welfare of the citizens of this State.

18 b. In particular, the unlawful manufacture and distribution of
19 controlled dangerous substances can undermine the quality of life
20 enjoyed by all persons who live or work in a neighborhood where such
21 unlawful activity occurs.

22 c. Persons who engage in unlawful drug activity serve as negative
23 role models for the young, enlist others to join in illicit enterprises,
24 attract violent criminals who prey upon the innocent, and drive away
25 law-abiding citizens, thus having an adverse impact upon legitimate
26 businesses.

27 d. Displacing those who engage in the unlawful manufacture and
28 distribution of controlled dangerous substances from the situs of their
29 offenses will disrupt drug trafficking by forcing offenders to abandon
30 familiar and comfortable surroundings and requiring them to rely on
31 more cumbersome techniques for conducting street-level transactions.
32 Restraining orders will also protect the public by separating drug
33 offenders from their known markets for sales and purchases of
34 controlled dangerous substances.

35

36 3. Definitions.

37 As used in this act:

38 a. “Person” means any person charged with or convicted of a

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted February 18, 1999.

1 criminal offense or any juvenile charged with delinquency or
2 adjudicated delinquent for ¹an¹ act which, if committed by an adult,
3 would be a criminal offense.

4 b. "Place" includes any premises, residence, business establishment,
5 location or specified area including all buildings and all appurtenant
6 land, in which or at which a criminal offense occurred or is alleged to
7 have occurred or is affected by the criminal offense with which the
8 person is charged.

9 c. "Criminal offense" means an offense that involves the
10 manufacturing, distributing, selling or possessing with intent to
11 distribute a controlled dangerous substance or the unlawful possession
12 or use of an assault firearm as defined in subsection w. of
13 N.J.S.2C:39-1.

14

15 4. a. When a person is charged with a criminal offense and the
16 person is released from custody before trial on bail or personal
17 recognizance, or is released to the custody of a parent, guardian,
18 custodian or public or private agency, the court, as a condition of
19 release and except as provided in subsection c. of this section, shall
20 issue an order prohibiting the person from entering any place defined
21 by subsection b. of section 3 of P.L. _____, c.____ (C.____)(now
22 pending before the legislature as this bill).

23 b. When a person is convicted of ¹or adjudicated delinquent for¹
24 any criminal offense, the court, in addition to any other disposition
25 authorized by law and except as provided in subsection c. of this
26 section, shall issue an order prohibiting the person from entering any
27 place defined by subsection b. of section 3 of P.L._____, c.____
28 (C.____) (now pending before the legislature as this bill).

29 c. The court may forego issuing a restraining order only if the
30 defendant establishes by clear and convincing evidence that:

31 (1) the defendant lawfully resides at or has legitimate business on
32 or near the place, or otherwise legitimately needs to enter the place.
33 In such an event, the court shall not issue an order pursuant to this
34 section unless the court is clearly convinced that the need to bar the
35 person from the place in order to protect the public safety and the
36 rights, safety and health of the residents and persons working in the
37 place outweighs the person's interest in returning to the place. If the
38 balance of the interests of the person and the public so warrants, the
39 court may issue an order imposing conditions upon the person's entry
40 at, upon or near the place; or

41 (2) the issuance of an order would cause undue hardship to
42 innocent persons and would constitute a serious injustice which
43 overrides the need to protect the rights, safety and health of persons
44 residing in or having business in the place.

45 d. A restraining order issued pursuant to subsection a. or b. of this
46 section shall describe the place from which the person has been barred

1 and any conditions upon the person's entry into the place, with
2 sufficient specificity to enable the person to guide his conduct
3 accordingly and to enable a law enforcement officer to enforce the
4 order. When appropriate, the court may append to the order a map
5 depicting the place. The person shall be given a copy of the
6 restraining order and any appended map and shall acknowledge in
7 writing the receipt thereof.

8 e. The court shall provide notice of the restraining order to the
9 local law enforcement agency where the arrest occurred and to the
10 county prosecutor. In addition, when the order prohibits a person
11 charged with a criminal offense from entering at, upon or near any
12 building, business premises, school or other public, private or
13 commercial premises, the court may cause notice of the restraining
14 order to be transmitted to the owner of such property and to the
15 owner's agent, or, in the case of a school or any government-owned
16 property, to the appropriate administrator, and to any tenant
17 association representing the residents of the affected area.
18 Notwithstanding the provisions of section 1 of P.L.1982, c.79
19 (C.2A:4A-60), the local law enforcement agency may post a copy of
20 any orders issued pursuant to this section upon one or more of the
21 principal entrances of the place or in any other conspicuous location.
22 Such posting shall be for the purpose of informing the public, and the
23 failure to post a copy of the order shall in no way excuse any violation
24 of the order.

25 f. When a juvenile has been adjudicated delinquent for an act
26 which, if committed by an adult, would be a criminal offense, in
27 addition to 'an order required by subsection b. of this section or'¹ any
28 other disposition authorized by law, the court may order the juvenile
29 and any parent, guardian or any family member over whom the court
30 has jurisdiction to take such actions or obey such restraints as may be
31 necessary to facilitate the rehabilitation of the juvenile or to protect
32 public safety or to safeguard or enforce the rights of residents of the
33 place. The court may commit the juvenile to the care of the
34 Department of Human Services under the responsibility of the Division
35 of Youth and Family Services until such time as the juvenile reaches
36 the age of 18 or until the order of removal and restraint expires,
37 whichever first occurs, or to such alternative residential placement as
38 is practicable.

39 g. An order issued pursuant to subsection a. of this section shall
40 remain in effect until the case has been adjudicated or dismissed, or for
41 not less than two years, whichever is less. An order issued pursuant
42 to subsection b. of this section shall remain in effect for such period of
43 time as shall be fixed by the court but not longer than 'the'¹ maximum
44 term of imprisonment or incarceration allowed by law for the
45 underlying offense or offenses. When the court issues a restraining
46 order pursuant to subsection b. of this section and the person is also

1 sentenced to any form of probationary supervision or participation in
2 the Intensive Supervision Program, the court shall make continuing
3 compliance with the order an express condition of probation or the
4 Intensive Supervision Program. When the person has been sentenced
5 to a term of incarceration, continuing compliance with the terms and
6 conditions of the order shall be made an express condition of the
7 person's release from confinement or incarceration on parole.

8 h. The court shall immediately notify the appropriate law
9 enforcement agency in writing whenever an application is made to stay
10 or modify an order issued pursuant to this act. If the court does not
11 issue a restraining order, the sentence imposed by the court for a
12 criminal offense as defined in subsection b. of this section shall not
13 become final for ten days in order to permit the appeal of the court's
14 findings by the prosecution.

15 i. Nothing in this section shall be construed in any way to limit the
16 authority of the court to take such other actions or to issue such
17 orders as may be necessary to protect the public safety or to safeguard
18 or enforce the rights of ¹【other swith】 others with¹ respect to the
19 place.

20 j. Notwithstanding any other provision of this section, the court
21 may permit the person to return to the place to obtain personal
22 belongings and effects and, by court order, may restrict the time and
23 duration and provide for police supervision of such a visit.

24
25 5. Violation of any order issued pursuant to this act shall subject
26 the person to civil contempt, criminal contempt, revocation of bail,
27 probation or parole, or any combination of these sanctions and any
28 other sanctions authorized by law. A law enforcement officer may
29 arrest an adult or take into custody a juvenile when an officer has
30 probable cause to believe that the person has violated the terms of any
31 removal and restraining order issued pursuant to section 4 of
32 P.L.____, c.____ (C._____) (now pending before the Legislature as
33 this bill).

34
35 6. This act shall take effect immediately.

36
37
38 _____
39
40 Establishes procedures allowing the issuance of restraining orders
41 against persons charged with or convicted of certain offenses.

SENATE, No. 1697

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JANUARY 28, 1999

Sponsored by:

Senator WILLIAM L. GORMLEY

District 2 (Atlantic)

Senator WAYNE R. BRYANT

District 5 (Camden and Gloucester)

SYNOPSIS

Establishes procedures allowing the issuance of restraining orders against persons charged with or convicted of certain offenses.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning the removal and restraint of persons who commit
2 or are charged with certain offenses and supplementing Title 2C of
3 the New Jersey Statutes.

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14 1987,” N.J.S.2C:35-1 et seq., the Legislature recognized that the
15 unlawful manufacture, distribution, possession and use of controlled
16 dangerous substances poses a serious and pervasive threat to the
17 health, safety and welfare of the citizens of this State.

18 b. In particular, the unlawful manufacture and distribution of
19 controlled dangerous substances can undermine the quality of life
20 enjoyed by all persons who live or work in a neighborhood where such
21 unlawful activity occurs.

22 c. Persons who engage in unlawful drug activity serve as negative
23 role models for the young, enlist others to join in illicit enterprises,
24 attract violent criminals who prey upon the innocent, and drive away
25 law-abiding citizens, thus having an adverse impact upon legitimate
26 businesses.

27 d. Displacing those who engage in the unlawful manufacture and
28 distribution of controlled dangerous substances from the situs of their
29 offenses will disrupt drug trafficking by forcing offenders to abandon
30 familiar and comfortable surroundings and requiring them to rely on
31 more cumbersome techniques for conducting street-level transactions.
32 Restraining orders will also protect the public by separating drug
33 offenders from their known markets for sales and purchases of
34 controlled dangerous substances.

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36 3. Definitions.

37 As used in this act:

38 a. “Person” means any person charged with or convicted of a
39 criminal offense or any juvenile charged with delinquency or
40 adjudicated delinquent for act which, if committed by an adult, would
41 be a criminal offense.

42 b. “Place” includes any premises, residence, business establishment,
43 location or specified area including all buildings and all appurtenant
44 land, in which or at which a criminal offense occurred or is alleged to
45 have occurred or is affected by the criminal offense with which the
46 person is charged.

1 c. "Criminal offense" means an offense that involves the
2 manufacturing, distributing, selling or possessing with intent to
3 distribute a controlled dangerous substance or the unlawful possession
4 or use of an assault firearm as defined in subsection w. of
5 N.J.S.2C:39-1.

6

7 4. a. When a person is charged with a criminal offense and the
8 person is released from custody before trial on bail or personal
9 recognizance, or is released to the custody of a parent, guardian,
10 custodian or public or private agency, the court, as a condition of
11 release and except as provided in subsection c. of this section, shall
12 issue an order prohibiting the person from entering any place defined
13 by subsection b. of section 3 of P.L. _____, c. ____ (C.____)(now
14 pending before the legislature as this bill).

15 b. When a person is convicted of any criminal offense, the court,
16 in addition to any other disposition authorized by law and except as
17 provided in subsection c. of this section, shall issue an order
18 prohibiting the person from entering any place defined by subsection
19 b. of section 3 of P.L. _____, c. ____ (C.____) (now pending before
20 the legislature as this bill).

21 c. The court may forego issuing a restraining order only if the
22 defendant establishes by clear and convincing evidence that:

23 (1) the defendant lawfully resides at or has legitimate business on
24 or near the place, or otherwise legitimately needs to enter the place.
25 In such an event, the court shall not issue an order pursuant to this
26 section unless the court is clearly convinced that the need to bar the
27 person from the place in order to protect the public safety and the
28 rights, safety and health of the residents and persons working in the
29 place outweighs the person's interest in returning to the place. If the
30 balance of the interests of the person and the public so warrants, the
31 court may issue an order imposing conditions upon the person's entry
32 at, upon or near the place; or

33 (2) the issuance of an order would cause undue hardship to
34 innocent persons and would constitute a serious injustice which
35 overrides the need to protect the rights, safety and health of persons
36 residing in or having business in the place.

37 d. A restraining order issued pursuant to subsection a. or b. of this
38 section shall describe the place from which the person has been barred
39 and any conditions upon the person's entry into the place, with
40 sufficient specificity to enable the person to guide his conduct
41 accordingly and to enable a law enforcement officer to enforce the
42 order. When appropriate, the court may append to the order a map
43 depicting the place. The person shall be given a copy of the
44 restraining order and any appended map and shall acknowledge in
45 writing the receipt thereof.

46 e. The court shall provide notice of the restraining order to the

1 local law enforcement agency where the arrest occurred and to the
2 county prosecutor. In addition, when the order prohibits a person
3 charged with a criminal offense from entering at, upon or near any
4 building, business premises, school or other public, private or
5 commercial premises, the court may cause notice of the restraining
6 order to be transmitted to the owner of such property and to the
7 owner's agent, or, in the case of a school or any government-owned
8 property, to the appropriate administrator, and to any tenant
9 association representing the residents of the affected area.
10 Notwithstanding the provisions of section 1 of P.L.1982, c.79
11 (C.2A:4A-60), the local law enforcement agency may post a copy of
12 any orders issued pursuant to this section upon one or more of the
13 principal entrances of the place or in any other conspicuous location.
14 Such posting shall be for the purpose of informing the public, and the
15 failure to post a copy of the order shall in no way excuse any violation
16 of the order.

17 f. When a juvenile has been adjudicated delinquent for an act
18 which, if committed by an adult, would be a criminal offense, in
19 addition to any other disposition authorized by law, the court may
20 order the juvenile and any parent, guardian or any family member over
21 whom the court has jurisdiction to take such actions or obey such
22 restraints as may be necessary to facilitate the rehabilitation of the
23 juvenile or to protect public safety or to safeguard or enforce the
24 rights of residents of the place. The court may commit the juvenile to
25 the care of the Department of Human Services under the
26 responsibility of the Division of Youth and Family Services until such
27 time as the juvenile reaches the age of 18 or until the order of removal
28 and restraint expires, whichever first occurs, or to such alternative
29 residential placement as is practicable.

30 g. An order issued pursuant to subsection a. of this section shall
31 remain in effect until the case has been adjudicated or dismissed, or for
32 not less than two years, whichever is less. An order issued pursuant
33 to subsection b. of this section shall remain in effect for such period of
34 time as shall be fixed by the court but not longer than maximum term
35 of imprisonment or incarceration allowed by law for the underlying
36 offense or offenses. When the court issues a restraining order
37 pursuant to subsection b. of this section and the person is also
38 sentenced to any form of probationary supervision or participation in
39 the Intensive Supervision Program, the court shall make continuing
40 compliance with the order an express condition of probation or the
41 Intensive Supervision Program. When the person has been sentenced
42 to a term of incarceration, continuing compliance with the terms and
43 conditions of the order shall be made an express condition of the
44 person's release from confinement or incarceration on parole.

45 h. The court shall immediately notify the appropriate law
46 enforcement agency in writing whenever an application is made to stay

1 or modify an order issued pursuant to this act. If the court does not
2 issue a restraining order, the sentence imposed by the court for a
3 criminal offense as defined in subsection b. of this section shall not
4 become final for ten days in order to permit the appeal of the court's
5 findings by the prosecution.

6 i. Nothing in this section shall be construed in any way to limit the
7 authority of the court to take such other actions or to issue such
8 orders as may be necessary to protect the public safety or to safeguard
9 or enforce the rights of other swith respect to the place.

10 j. Notwithstanding any other provision of this section, the court
11 may permit the person to return to the place to obtain personal
12 belongings and effects and, by court order, may restrict the time and
13 duration and provide for police supervision of such a visit.

14
15 5. Violation of any order issued pursuant to this act shall subject
16 the person to civil contempt, criminal contempt, revocation of bail,
17 probation or parole, or any combination of these sanctions and any
18 other sanctions authorized by law. A law enforcement officer may
19 arrest an adult or take into custody a juvenile when an officer has
20 probable cause to believe that the person has violated the terms of any
21 removal and restraining order issued pursuant to section 4 of
22 P.L._____, c.____ (C._____) (now pending before the Legislature as
23 this bill).

24
25 6. This act shall take effect immediately.
26
27

28 STATEMENT
29

30 This bill would authorize a court to issue a restraining order (a
31 “stay-away” order) prohibiting a person charged with, convicted of or
32 adjudicated delinquent for any offense involving the manufacture,
33 distribution, sale or possession with intent to distribute or sell a
34 controlled substance, or an offense involving the use or possession of
35 an assault firearm, from entering at, upon or near the place where the
36 offense occurred or is alleged to have occurred. When the court
37 determines that the person lawfully resides at the place or otherwise
38 has legitimate business at the place, the court may not issue a stay-
39 away order unless it is clearly convinced that the need to bar the
40 person outweighs the person's interest in returning to the place where
41 the offense or conduct is alleged to have occurred. The stay-away
42 order issued pursuant to this act must be drafted with sufficient
43 specificity to enable the defendant to comply with, and to permit a law
44 enforcement agency to enforce, the order.

45 This remedy provides an enforcement tool by which law
46 enforcement agencies can enlist the support and cooperation of

1 citizens, community leaders, tenant associations and other groups.
2 Stay-away orders will enable law enforcement agencies to take steps
3 to reclaim neighborhoods that have become open-air markets for
4 illegal drug trafficking. Although courts now have broad powers to
5 impose conditions upon the grant of bail or other pretrial release and
6 the Parole Board similarly has such authority with respect to release
7 on parole, this bill specifically delineates sanctions the courts can
8 impose to separate the criminal element from the source of criminal
9 activity. Precise legislative guidance is included as to when these
10 sanctions should be imposed. This bill would not limit the authority
11 of the court under any other statute or general principle of law to
12 impose such sanctions or to take such actions as may be necessary to
13 protect public safety or to facilitate the rehabilitation of the defendant
14 or juvenile.

15 The stay-away order will remain in effect for a period up to a
16 maximum term of imprisonment or detention which the court could
17 have imposed at the time of sentencing. Pretrial restraining orders
18 must remain in effect until the case is adjudicated or dismissed or for
19 a minimum of two years, whichever is less. If the order extends
20 beyond any actual term of imprisonment, the effect would be to
21 establish as a required condition of probation or parole that the person
22 stay away from the place where the offense was committed.

23 To enlist more active community participation, this bill requires the
24 court to cause notice of any order to be transmitted forthwith to the
25 owner or landlord of the place involved, as well as to the police
26 department having patrol jurisdiction of that location.

27 There are two exceptions to the general rule that would require the
28 court to issue a stay-away order. The first exception provides that if
29 a person charged with an offense establishes that he lawfully resides
30 at or has legitimate business on or near the place, or otherwise
31 legitimately needs to enter the place, the court shall not issue an order
32 unless the court is clearly convinced that the need to bar the person
33 from the place in order to protect the public safety and the rights,
34 safety and health of the residents and persons working in the place
35 outweighs the person's interest in returning to the place. If the
36 balance of the interests of the person and the public so warrants, the
37 court may issue an order imposing conditions upon the person's entry
38 at, upon or near the place.

39 Secondly, an exception is provided that the court is authorized to
40 forego issuance of the stay-away order when the defendant establishes
41 by clear and convincing evidence that the issuance of a stay-away
42 order would cause undue hardship to innocent persons and would
43 constitute a serious injustice which overrides the need to protect the
44 rights, safety and health of the other residents of the place. This
45 exception is intended to be only rarely used. Under this formulation,
46 the presumption that the court would issue a stay-away order would

S1697 GORMLEY, BRYANT

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1 not be overcome by the fact that the defendant is a first offender, or
2 that the mitigating factors at sentencing preponderate or even
3 substantially outweigh any aggravating factors. The overriding
4 purpose of this section is to guarantee that victims of drug offenses
5 are protected from any continuing criminal activities that might be
6 committed by this defendant or juvenile. It is thus intended that this
7 exception will only apply in exceptional cases where the issuance of
8 the stay-away order will not serve any specific deterrent or
9 incapacitative purpose.

10 To ensure that these exceptions are only used in appropriate cases,
11 this bill expressly authorizes the prosecuting authority to appeal the
12 court's determination to forego issuing an order otherwise required.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 1697

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 18, 1999

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 1697.

This bill would authorize a court to issue a restraining order (a "stay-away" order) prohibiting any person, including a juvenile, charged with or convicted of any offense involving drug trafficking or the use or possession of an assault firearm from entering at, upon or near the place where the offense occurred or is alleged to have occurred. If the court determines that the person lawfully resides at the place or otherwise has legitimate business at the place, the court may not issue a stay-away order unless it is clearly convinced evidence that the need to bar the person outweighs the person's interest in returning to the place where the offense or conduct is alleged to have occurred. The court is also authorized to forego issuance of the stay-away order when the defendant establishes by clear and convincing that the issuance of a stay-away order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of the other residents of the place.

Any stay-away order issued must be drafted with sufficient specificity to enable the defendant to comply with, and a law enforcement agency to enforce, the order.

Stay-away orders would remain in effect for a period up to a maximum term of imprisonment or detention which the court could have imposed at the time of sentencing. Pretrial restraining orders must remain in effect until the case is adjudicated or dismissed or for a minimum of two years, whichever is less. If the order extends beyond any actual term of imprisonment, the effect would be to establish as a required condition of probation or parole that the person stay away from the place where the offense was committed.

The bill requires the court to cause notice of any order to be transmitted forthwith to the owner or landlord of the place involved, as well as to the police department having patrol jurisdiction over that location.

The bill also expressly authorizes the prosecuting agency to appeal

any determination by a court not to issue a "stay-away" order.

The amendments adopted by the committee were technical in nature clarifying the bill's provisions and correcting several typographical errors.

ASSEMBLY, No. 2878

STATE OF NEW JERSEY

208th LEGISLATURE

INTRODUCED FEBRUARY 18, 1999

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman KENNETH C. LEFEVRE

District 2 (Atlantic)

SYNOPSIS

Establishes procedures allowing the issuance of restraining orders against persons charged with or convicted of certain offenses.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/19/1999)

1 AN ACT concerning the removal and restraint of persons who commit
2 or are charged with certain offenses and supplementing Title 2C of
3 the New Jersey Statutes.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. This act shall be known and may be cited as the “Drug Offender
9 Restraining Order Act of 1999.”

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11 2. The Legislature hereby finds and declares to be the public
12 policy of this State, the following:

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14 1987,” N.J.S.2C:35-1 et seq., the Legislature recognized that the
15 unlawful manufacture, distribution, possession and use of controlled
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17 health, safety and welfare of the citizens of this State.

18 b. In particular, the unlawful manufacture and distribution of
19 controlled dangerous substances can undermine the quality of life
20 enjoyed by all persons who live or work in a neighborhood where such
21 unlawful activity occurs.

22 c. Persons who engage in unlawful drug activity serve as negative
23 role models for the young, enlist others to join in illicit enterprise,
24 attract violent criminals who prey upon the innocent, and drive away
25 law-abiding citizens, thus having an adverse impact upon legitimate
26 businesses.

27 d. Displacing those who engage in the unlawful manufacture and
28 distribution of controlled dangerous substances from the situs of their
29 offenses will disrupt drug trafficking by forcing offenders to abandon
30 familiar and comfortable surroundings and requiring them to rely on
31 more cumbersome techniques for conducting street-level transactions.
32 Restraining orders will also protect the public by separating drug
33 offenders from their known markets for sales and purchases of
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42 b. “Place” includes any premises, residence, business establishment,
43 location or specified area including all buildings and all appurtenant
44 land, in which or at which a criminal offense occurred or is alleged to
45 have occurred or is affected by the criminal offense with which the
46 person is charged.

1 c. "Criminal offense" means an offense that involves the
2 manufacturing, distributing, selling or possessing with intent to
3 distribute a controlled dangerous substance or the unlawful possession
4 or use of an assault firearm as defined in subsection w. of
5 N.J.S.2C:39-1.

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7 4. a. When a person is charged with a criminal offense and the
8 person is released from custody before trial on bail or personal
9 recognizance, or is released to the custody of a parent, guardian,
10 custodian or public or private agency, the court, as a condition of
11 release and except as provided in subsection c. of this section, shall
12 issue an order prohibiting the person from entering any place defined
13 by subsection b. of section 3 of P.L. _____, c. ____ (C.____)(now
14 pending before the legislature as this bill).

15 b. When a person is convicted of any criminal offense, the court,
16 in addition to any other disposition authorized by law and except as
17 provided in subsection c. of this section, shall issue an order
18 prohibiting the person from entering any place defined by subsection
19 b. of section 3 of this act.

20 c. The court may forego issuing a restraining order only if the
21 defendant establishes by clear and convincing evidence that:

22 (1) the defendant lawfully resides at or has legitimate business on
23 or near the place, or otherwise legitimately needs to enter the place.
24 In such an event, the court shall not issue an order pursuant to this
25 section unless the court is clearly convinced that the need to bar the
26 person from the place in order to protect the public safety and the
27 rights, safety and health of the residents and persons working in the
28 place outweighs the person's interest in returning to the place. If the
29 balance of the interests of the person and the public so warrants, the
30 court may issue an order imposing conditions upon the person's entry
31 at, upon or near the place; or

32 (2) the issuance of an order would cause undue hardship to
33 innocent persons and would constitute a serious injustice which
34 overrides the need to protect the rights, safety and health of persons
35 residing in or having business in the place.

36 d. A restraining order issued pursuant to subsection a. or b. of
37 this section shall describe the place from which the person has been
38 barred and any conditions upon the person's entry into the place, with
39 sufficient specificity to enable the person to guide his conduct
40 accordingly and to enable a law enforcement officer to enforce the
41 order. When appropriate, the court may append to the order a map
42 depicting the place. The person shall be given a copy of the
43 restraining order and any appended map and shall acknowledge in
44 writing the receipt thereof.

45 e. The court shall provide notice of the restraining order to the
46 local law enforcement agency where the arrest occurred and to the

1 county prosecutor. In addition, when the order prohibits a person
2 charged with a criminal offense from entering at, upon or near any
3 building, business premises, school or other public, private or
4 commercial premises, the court may cause notice of the restraining
5 order to be transmitted to the owner of such property and to the
6 owner's agent, or, in the case of a school or any government-owned
7 property, to the appropriate administrator, and to any tenant
8 association representing the residents of the affected area.
9 Notwithstanding the provisions of section 1 of P.L.1982, c.79
10 (C.2A:4A-60), the local law enforcement agency may post a copy of
11 any orders issued pursuant to this section upon one or more of the
12 principal entrances of the place or in any other conspicuous location.
13 Such posting shall be for the purpose of informing the public, and the
14 failure to post a copy of the order shall in no way excuse any violation
15 of the order.

16 f. When a juvenile has been adjudicated delinquent for an act
17 which, if committed by an adult, would be a criminal offense, in
18 addition to any other disposition authorized by law, the court may
19 order the juvenile and any parent, guardian or any family member over
20 whom the court has jurisdiction to take such actions or obey such
21 restraints as may be necessary to facilitate the rehabilitation of the
22 juvenile or to protect public safety or to safeguard or enforce the
23 rights of residents of the place. The court may commit the juvenile to
24 the care of the Department of Human Services under the
25 responsibility of the Division of Youth and Family Services until such
26 time as the juvenile reaches the age of 18 or until the order of removal
27 and restraint expires, whichever first occurs, or to such alternative
28 residential placement as is practicable.

29 g. An order issued pursuant to subsection a. of this section shall
30 remain in effect until the case has been adjudicated or dismissed, or for
31 not less than two years, whichever is less. An order issued pursuant
32 to subsection b. of this section shall remain in effect for such period of
33 time as shall be fixed by the court but not longer than maximum term
34 of imprisonment or incarceration allowed by law for the underlying
35 offense or offenses. When the court issues a restraining order
36 pursuant to subsection b. of this section and the person is also
37 sentenced to any form of probationary supervision or participation in
38 the Intensive Supervision Program, the court shall make continuing
39 compliance with the order an express condition of probation or the
40 Intensive Supervision Program. When the person has been sentenced
41 to a term of incarceration, continuing compliance with the terms and
42 conditions of the order shall be made an express condition of the
43 person's release from confinement or incarceration on parole.

44 h. The court shall immediately notify the appropriate law
45 enforcement agency in writing whenever an application is made to stay
46 or modify an order issued pursuant to this act. If the court does not

1 issue a restraining order, the sentence imposed by the court for a
2 criminal offense as defined in subsection b. of this section shall not
3 become final for ten days in order to permit the appeal of the court's
4 findings by the prosecution.

5 i. Nothing in this section shall be construed in any way to limit
6 the authority of the court to take such other actions or to issue such
7 orders as may be necessary to protect the public safety or to safeguard
8 or enforce the rights of other residents of the place.

9 j. Notwithstanding any other provision of this section, the court
10 may permit the person to return to the place to obtain personal
11 belongings and effects and, by court order, may restrict the time and
12 duration and provide for police supervision of such a visit.

13
14 5. Violation of any order issued pursuant to this act shall subject
15 the person to civil contempt, criminal contempt, revocation of bail,
16 probation or parole, or any combination of these sanctions and any
17 other sanctions authorized by law. A law enforcement officer may
18 arrest an adult or take into custody a juvenile when an officer has
19 probable cause to believe that the person has violated the terms of any
20 removal and restraining order issued pursuant to section 4 of
21 P.L.____, c.____ (C.____) (now pending before the Legislature as this
22 bill).

23
24 6. This act shall take effect immediately.

25
26
27 STATEMENT

28
29 This bill would authorize a court to issue a restraining order (a
30 “stay-away” order) prohibiting a person charged with, convicted of or
31 adjudicated delinquent for any offense involving the manufacture,
32 distribution, sale or possession with intent to distribute or sell a
33 controlled substance, or an offense involving the use or possession of
34 an assault firearm, from entering at, upon or near the place where the
35 offense occurred or is alleged to have occurred. When the court
36 determines that the person lawfully resides at the place or otherwise
37 has legitimate business at the place, the court may not issue a stay-
38 away order unless it is clearly convinced that the need to bar the
39 person outweighs the person's interest in returning to the place where
40 the offense or conduct is alleged to have occurred. The stay-away
41 order issued pursuant to this act must be drafted with sufficient
42 specificity to enable the defendant to comply with, and to permit a law
43 enforcement agency to enforce, the order.

44 This remedy provides an enforcement tool by which law
45 enforcement agencies can enlist the support and cooperation of
46 citizens, community leaders, tenant associations and other groups.

1 Stay-away orders will enable law enforcement agencies to take steps
2 to reclaim neighborhoods that have become open-air markets for
3 illegal drug trafficking. Although courts now have broad powers to
4 impose conditions upon the grant of bail or other pretrial release and
5 the Parole Board similarly has such authority with respect to release
6 on parole, this bill specifically delineates sanctions the courts can
7 impose to separate the criminal element from the source of criminal
8 activity. Precise legislative guidance is included as to when these
9 sanctions should be imposed. This bill would not limit the authority
10 of the court under any other statute or general principle of law to
11 impose such sanctions or to take such actions as may be necessary to
12 protect public safety or to facilitate the rehabilitation of the defendant
13 or juvenile.

14 The stay-away order will remain in effect for a period up to a
15 maximum term of imprisonment or detention which the court could
16 have imposed at the time of sentencing. Pretrial restraining orders
17 must remain in effect until the case is adjudicated or dismissed or for
18 a minimum of two years, whichever is less. If the order extends
19 beyond any actual term of imprisonment, the effect would be to
20 establish as a required condition of probation or parole that the person
21 stay away from the place where the offense was committed.

22 To enlist more active community participation, this bill requires the
23 court to cause notice of any order to be transmitted forthwith to the
24 owner or landlord of the place involved, as well as to the police
25 department having patrol jurisdiction of that location.

26 There are two exceptions to the general rule that would require the
27 court to issue a stay-away order. The first exception provides that if
28 a person charged with an offense establishes that he lawfully resides
29 at or has legitimate business on or near the place, or otherwise
30 legitimately needs to enter the place, the court shall not issue an order
31 unless the court is clearly convinced that the need to bar the person
32 from the place in order to protect the public safety and the rights,
33 safety and health of the residents and persons working in the place
34 outweighs the person's interest in returning to the place. If the
35 balance of the interests of the person and the public so warrants, the
36 court may issue an order imposing conditions upon the person's entry
37 at, upon or near the place.

38 Secondly, an exception is provided that the court is authorized to
39 forego issuance of the stay-away order when the defendant establishes
40 by clear and convincing evidence that the issuance of a stay-away
41 order would cause undue hardship to innocent persons and would
42 constitute a serious injustice which overrides the need to protect the
43 rights, safety and health of the other residents of the place. This
44 exception is intended to be only rarely used. Under this formulation,
45 the presumption that the court would issue a stay-away order would
46 not be overcome by the fact that the defendant is a first offender, or

1 that the mitigating factors at sentencing preponderate or even
2 substantially outweigh any aggravating factors. The overriding
3 purpose of this section is to guarantee that victims of drug offenses
4 are protected from any continuing criminal activities that might be
5 committed by this defendant or juvenile. It is thus intended that this
6 exception will only apply in exceptional cases where the issuance of
7 the stay-away order will not serve any specific deterrent or
8 incapacitative purpose.

9 To ensure that these exceptions are only used in appropriate cases,
10 this bill expressly authorizes the prosecuting authority to appeal the
11 court's determination to forego issuing an order otherwise required.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2878

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 14, 1999

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 2878.

This bill would authorize a court to issue a restraining order (a “stay-away” order) prohibiting a person charged with, convicted of or adjudicated delinquent for any offense involving the manufacture, distribution, sale or possession with intent to distribute or sell a controlled substance, or an offense involving the use or possession of an assault firearm, from entering at, upon or near the place where the offense occurred or is alleged to have occurred. When the court determines that the person lawfully resides at the place or otherwise has legitimate business at the place, the court may not issue a restraining order unless it is clearly convinced that the need to bar the person outweighs the person's interest in returning to the place where the offense or conduct is alleged to have occurred.

The restraining order must be drafted with sufficient specificity to enable the defendant to comply with, and to permit a law enforcement agency to enforce, the order.

The restraining order will remain in effect for a period up to a maximum term of imprisonment or detention which the court could have imposed at the time of sentencing. Pretrial restraining orders must remain in effect until the case is adjudicated or dismissed or for a minimum of two years, whichever is less. If the order extends beyond any actual term of imprisonment, the effect would be to establish as a required condition of probation or parole that the person stay away from the place where the offense was committed.

This bill requires the court to cause notice of any order to be transmitted to the owner or landlord of the place involved, as well as to the police department having patrol jurisdiction of that location.

There are two exceptions to the general rule that would require the court to issue a stay-away order. The first exception provides that if a person charged with an offense establishes that he lawfully resides at or has legitimate business on or near the place, or otherwise legitimately needs to enter the place, the court shall not issue an order unless the court is clearly convinced that the need to bar the person from the place in order to protect the public safety and the rights,

safety and health of the residents and persons working in the place outweighs the person's interest in returning to the place. The court may issue an order imposing conditions upon the person's entry at, upon or near the place.

Secondly, an exception is provided when the defendant establishes by clear and convincing evidence that the issuance of a stay-away order would cause undue hardship to innocent persons and would constitute a serious injustice which overrides the need to protect the rights, safety and health of the other residents of the place.

The bill expressly authorizes the prosecuting authority to appeal the court's determination to not issue an order.

The committee amendments are technical in nature in sections 3 and 4 of the bill.

As amended, this bill is identical to Senate, No. 1697 (1R).

Office of the Governor
NEWS RELEASE

CONTACT: Gene Herman
609-777-2600

RELEASE: January 10, 2000

Gov. Christie Whitman today signed the following pieces of legislation:

S-436, sponsored by Senators C. Louis Bassano (R-Essex/Union) and Diane B. Allen (R-Burlington/Camden), requires the Department of Health and Senior Services (DHSS) to prepare an informational pamphlet on the nature and causes of osteoporosis and methods used to treat and prevent osteoporosis. The bill appropriates \$25,000 from the General Fund to DHSS to fund the printing and distribution of the pamphlets.

S-1735, sponsored by Senators William L. Gormley (R-Atlantic) and John A. Girgenti (D-Passaic) and Assembly Members Kenneth C. LeFevre (R-Atlantic) and Francis J. Blee (R-Atlantic), amends the reckless endangerment statute to clarify that adulteration of a drink or other substance constitutes the fourth degree offense of reckless endangerment. Specifically, the bill clarifies that this offense is committed when a person purposely or knowingly gives another person a drink or other substance that is intoxicating, tranquilizing or disorienting, when that other person does not know the identity and effect of the drink or substance.

A-2775, sponsored by Assembly Members John V. Kelly (R-Bergen/Essex/Passaic) and Paul DiGaetano (R-Bergen/Essex/Passaic) and Senator Garry J. Furnari (D-Bergen/Essex/Passaic), provides a grant of \$75,000 to create a study skills program in the East Rutherford Boro School District to address the needs of at-risk pupils. Pupils who are at-risk will be determined by using multiple indicators, including test scores, writing portfolios, teacher recommendations, and parental input. Funding will be utilized for staffing, teaching materials and other supplies. The bill makes a supplemental appropriation to the Fiscal Year 2000 budget.

A-1019, sponsored by Assembly Members Charles Zisa (D-Bergen) and Alan M. Augustine (R-Middlesex/Morris/Somerset/Union), and Senator Joseph A. Palaia (R-Monmouth), provides that commencing on September 1, 2002, any buildings and grounds supervisor employed by a school district must be a certified educational facilities manager. The bill directs the State Board of Education to issue rules and regulations to administer the program. The bill provides that a certified educational facilities manager must meet specific requirements, including having two years of experience in the field of buildings and grounds supervision and graduate as a certified educational facilities manager from the New Jersey Educational Facility Management Program at Rutgers University, or an equivalent program at an accredited institution of higher learning.

A-2993, sponsored by Assembly Members Gerald J. Luongo (R-Camden/Gloucester) and Senator Robert E. Littell (R-Sussex/Hunterdon/Morris), excludes bonds supported by open space, recreation, farmland or historic preservation taxes from calculation of gross debt of a county or municipality. Gross debt is a measure used under the Local Bond Law to derive the net debt of a county or municipality for purposes of establishing a county or municipal debt limit.

A-1445, sponsored by Assembly Members Jack Collins (R- Salem/Cumberland/Gloucester) and Marion Crecco (R-Essex/Passaic) and Senators Norman Robertson (R-Essex/Passaic) and Anthony R. Bucco (R- Morris), permits a police officer enrolled in the Police and Firemen's Retirement System to purchase up to three years of service credit based on inactive time between a point of no-fault layoff and the point of rehiring the employee.

A-2133, sponsored by Assembly Members John V. Kelly (R- Bergen/Essex/Passaic) and Joseph V. Doria, Jr. (D-Hudson), requires health insurers, including hospital service corporations, medical service corporations, health service corporations, commercial insurers and health maintenance organizations to provide health benefits coverage for annual mammograms for women aged 40 and over. Previous law provided for annual mammogram coverage for women 50 and over; women who are at least 40, but less than 50, were provided coverage for biannual examinations.

S-1503, sponsored by Senator Richard J. Codey (D-Essex) and Assembly Members John V. Kelly (R-Bergen/Essex/Passaic) and Paul DiGaetano (R-Bergen/Essex/Passaic), revises pension benefits and employee contribution rates for members of certain board of education pension funds.

A-2943, sponsored by Assembly Members Jack Collins (R-Cumberland/Gloucester/Salem) and Christopher Bateman (R-Morris/Somerset) and Senators Robert W. Singer (R-Burlington/Monmouth/Ocean) and Diane B. Allen (R-Burlington/Camden), requires the return of unearned premiums on a pro rata basis for canceled automobile insurance policies. Previous law only required an insurer to return unpaid premiums on a short rate basis, which is an amount less than the pro rata basis because a percentage of administrative costs are charged to the insured.

A-1706, sponsored by Assembly Member John V. Kelly (R-Bergen/Essex/Passaic) and Senators Robert W. Singer (R-Burlington/Monmouth/Ocean) and Louis F. Kosco (R-Bergen), establishes a procedure to be followed by landlords of commercial or residential property when disposing of tangible property left behind in premises that had been vacated by a tenant.

S-1062, sponsored by Senators William L. Gormley (R-Atlantic) and Edward T. O'Connor, Jr. (D-Hudson) and Assembly Members Richard A. Merkt (R-Morris) and Michael Patrick Carroll (R-Morris), establishes a procedure for dealing with lost or abandoned property.

A-3298, sponsored by Assembly Members John S. Wisniewski (D-Middlesex) and Gerald J. Luongo (R-Camden/Gloucester) and Senators Joseph F. Vitale (D-Middlesex) and Nicholas J. Sacco (D-Bergen/Hudson), allows for re-certification of the special district tax for school districts if the school district's surplus account is higher than estimated at the school election in certain circumstances.

S-1697, sponsored by Senators William L. Gormley (R-Atlantic) and Wayne R. Bryant (D-Camden/Gloucester) and Assembly Members James W. Holzapfel (R- Monmouth/Ocean) and Kenneth C. LeFevre (R-Atlantic), authorizes a court to issue a restraining order prohibiting a person charged with, convicted of or adjudicated delinquent for any drug distribution offense or any offense involving the use or possession of an assault weapon from returning to the place where the offense occurred.

A-960, sponsored by Assembly Member Alan M. Augustine (R- Middlesex/Morris/Somerset /Union), requires pet shops to refund the purchase price, reimburse any veterinary fees, or provide replacement for sick cats or dogs under certain circumstances.

S-1273, sponsored by Senators Robert W. Singer (R- Burlington/Monmouth/Ocean) and Robert W. Littell (R-Sussex/Hunterdon/Morris) and Assembly Members Charlotte Vandervalk (R- Bergen) and Nicholas R. Felice (R-Bergen/Passaic), permits HMO enrollees residing in certain retirement communities with nursing homes to continue to receive care at that nursing facility under certain circumstances.

A-1653, sponsored by Assembly Members John V. Kelly (R- Bergen/Essex/Passaic) and Neil M. Cohen (D-Union) and Senator Gerald Cardinale (R-Bergen), requires health insurers, including hospital service corporations, medical service corporation, health service corporations, commercial insurers and health maintenance organizations to provide insurance coverage benefits for health wellness examinations and counseling. The bill appropriates \$95,000 to the Department of Health and Senior Services for allocation to the Health Wellness Promotion Advisory Board to evaluate implementation of the provisions of the bill and to ensure awareness and utilization of the health promotion program by covered persons and health care providers.

A-2461, sponsored by Assembly Member Gary W. Stuhltrager (R-Salem/Cumberland/ Gloucester), extends the cap on tax liability on transfers of hazardous substances to certain successors in interest.